

**TENGKU REZA SHAH TENGKU CHAIDZIR SHAH
v. BANGSAR HEIGHTS PAVILION SDN BHD**

HIGH COURT MALAYA, JOHOR BAHRU
SHAMSULBAHRI IBRAHIM J
[CIVIL SUIT NO: JA-22NCvC-1-01-2024]
10 JUNE 2024

Abstract – *When an applicant is able to prove that it has a good and arguable case, and that there is sufficient evidence to support that the disputed assets are in imminent danger and the dissipation of them is real and not a bare allegation, then all criteria for the grant of a Mareva injunction are met. It is pertinent to note that because of the importance to preserve an asset from being disposed or dealt, a Mareva injunction can be applied at any time when necessary.*

CIVIL PROCEDURE: *Injunction – Mareva injunction – Application for – Whether there was good arguable case – Whether there was real risk assets would be dissipated – Whether all criteria for grant of Mareva injunction met – Rules of Court 2012, O. 29 rr. 1 & 2*

The plaintiff filed an *ex parte* application seeking for a number of *Mareva* injunctions against the defendant under O. 29 rr. 1 and 2 of the Rules of Court 2012 ('ROC'). The plaintiff was the majority shareholder of Brumasi Holdings Sdn Bhd (in liquidation) ('Brumasi'). Brumasi was the registered proprietor of a land ('land') which originally comprised four lots known as Lots 6894, 6895, 6896 and 2960. Majlis Bandaraya Johor Bahru approved the planning permission applied by Brumasi for the land to be developed into a 29-storey building complex. Brumasi had taken a loan from the bank and charged 12/25 share of the land (involving Lots 6895 and 6896) to the bank for the purpose of the loan. The charge later was taken over by Danaharta Urus Sdn Bhd ('Danaharta') which sold the two lots (Lots 6895 and 6896) to Asiapura Lands Sdn Bhd ('Asiapura') for a purchase price of RM4.25 million. Nevertheless, the balance of 13/25 share of the land (Lots 6894 and 2960) remained in favour of Brumasi. Brumasi was later wound-up. The then-liquidator of Brumasi, Teo Cheng Hua, sold Lots 6894 and 2960 for a purchase price of RM500,000 to Soo Yuh Mian, the majority shareholder of Bumaci Holdings ('Bumaci') and those lots were transferred to Bumaci. Subsequently, Asiapura filed a suit ('Suit 171') at the High Court against several parties and Bumaci, seeking for a few reliefs, *inter alia*, the transfer of Lots 6894 and 2960 between Brumasi to Bumaci was invalid. Teo Cheng Hua was later replaced by William Santosh John ('William') as the new liquidator of Brumasi. William and the rest of the parties in Suit 171 agreed to enter a consent judgment ('consent judgment') which terms were, *inter alia*, for Bumaci to surrender Lots 6894 and 2960 to the defendant. The plaintiff

- A averred that there were elements of fraud in the recording of the consent judgment for the following reason, *inter alia*, that the defendant was not even a party in the Suit 171 but suddenly was agreed by all parties in the proceedings to be appointed as the developer developing the land. Disagreeing with William's action, which was detrimental to Brumasi's interest, the plaintiff filed an application to remove William as Brumasi's liquidator, which was allowed. Dissatisfied with the consent judgment, the plaintiff filed Suit 258 against Asiapura and several other parties, seeking, *inter alia*, a declaration that the consent judgment in Suit 171 was void and invalid. The High Court held that there was an element of fraud in the sale of Lots 6894 and 2960 and ordered damages to be paid to the plaintiff. As the High Court only allowed the relief in the form of damages, and not the return of Lots 6894 and 2960, the plaintiff filed an appeal to the Court of Appeal. To date, the appeal was still pending for decision. The plaintiff obtained an *ex parte Mareva* injunction order against the defendant. Subsequently, the defendant filed an application to set aside the *ex parte* order. One Kang Hock Hin, who represented all interested parties in the development project, met the plaintiff to discuss on the *ex parte Mareva* injunction order. As a result, the plaintiff agreed to sign a settlement agreement. However, the plaintiff averred that the defendant refused or failed to sign the settlement agreement and this led the plaintiff to file this present action. The issues that arose were: (i) whether the plaintiff had a good arguable case; (ii) whether the defendant had assets within the jurisdiction; and (iii) whether there was a real risk that the assets would be dissipated.

Held (allowing *Mareva* injunctions order to remain):

- F (1) The crux of the dispute in this action was on the status of Lots 6894 and 2960 which were now in the midst of being developed by the defendant. The narrative of facts showed how these two lots were fraudulently transferred from Brumasi to the defendant. It was not a bare allegation by the plaintiff but the fraud was confirmed by the High Court, which decided that the then-Brumasi liquidator failed to comply with the provisions in the Companies Act and its rules when entering the consent judgment which resulted in the ownership of the two lots being shifted to the defendant. The documentary evidence exhibited by the plaintiff also disclosed that the winding-up court found that the then-Brumasi's liquidator was guilty of misconduct in handling the liquidation of Brumasi's assets. The plaintiff's case was more than barely capable of a serious argument. (para 26)
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- H
- I (2) There was no basis for the principle of *res judicata* to be applicable in the present action. The reason for the plaintiff to narrate the chronology of events on Lots 6894 and 2960 was not for the court to decide on the status of such lots but simply to explain how these two lots fell into the defendant's hands and to injunct the defendant from further dealing with the lots pending the decision of the Court of Appeal. Thus, there would be no multiplicity of decisions. (para 28)

- (3) As the power to grant a *Mareva* injunction was within the jurisdiction of this court, there was no hindrance for the plaintiff to file such application here. Because of the importance to preserve an asset from being disposed or dealt, a *Mareva* injunction could be applied at any time when necessary. The plaintiff had duly obtained the sanction from Brumasi's liquidator. By having this sanction, the plaintiff was competent to commence this action. (paras 29-31) A B
- (4) The land is now owned and being developed by the defendant into a 29-storey building complex. The defendant had been offering the sale of a number of units in the development project to the public and a sales office had been erected on the land where brochures about the units were distributed. The defendant had advertised the sale of the units in the development project in an online newspaper. The above facts disclosed sufficient evidence to support the plaintiff's allegations that Lots 6894 and 2960 were in imminent danger and the dissipation of these lots was real and not a bare allegation. (paras 33-35) C D
- (5) All criteria for the grant of *Mareva* injunction were met. This was a suitable case for such injunction to be made to ensure that the assets were not dissipated by the defendant. (para 36)

Case(s) referred to:

Lai King Lung & Anor v. Merai Sdn Bhd [2020] 9 CLJ 449 FC (*refd*) E
Lee Kai Wuen & Anor v. Lee Yee Wuen [2022] 7 CLJ 505 CA (*refd*)
Metrowangsa Asset Management Sdn Bhd & Anor v. Ahmad Hj Hassan & Ors [2004] CLJU 699; [2004] 1 LNS 699 HC (*refd*)
S & F International Ltd v. Trans-Con Engineering Sdn Bhd [1985] 2 CLJ 228; [1985] CLJ (Rep) 280 FC (*refd*) F

Legislation referred to:

Companies (Winding-up) Rules 1972, r. 47
 Companies Act 1965, s. 228
 Rules of Court 2012, O. 29 rr. 1, 2

For the plaintiff - Mohd Fairuz Abdullah; M/s Mohd Najid & Partners G
For the defendant - Dinesh Kanavaji, Zaim Zhafri Azhar, Taqir Akramin Khalib & Sarah Annesa Ahmad Jamal; M/s Taqir Akramin & Co

Reported by Suhainah Wahiduddin

JUDGMENT
 (Encls. 5 & 12) H

Shamsulbahri Ibrahim J:

Introduction

[1] These are applications filed by the plaintiff and the defendant in encls. 5 and 12 respectively relating to the plaintiff's *Mareva* injunction. I

A [2] In encl. 5 the plaintiff filed an *ex parte* application seeking for a number of *Mareva* injunctions against the defendant under O. 29 rr. 1 and 2 of the Rules of Court 2012 (“ROC”). The detail of the *Mareva* injunctions sought are as follows:

- B 1. Satu Perintah Injunksi *Mareva* menghalang Defendan dari melakukan semua kerja-kerja pembangunan ke atas lot 6894 and lot 2960 Mukim Bandar Johor Bahru, Negeri Johor yang merupakan 13/25 bahagian tanah tersebut dikenali sebagai Grn 400157 Lot 23008 Bandar Johor Bahru Negeri Johor sehingga keputusan Mahkamah Rayuan terhadap kes guaman sivil 258 dan/atau keputusan tindakan yang difailkan.
- C 2. Satu Perintah Injunksi *Mareva* menghalang Defendan dari mengiklankan memasarkan dan/atau mempromosi sebarang penjualan unit-unit, menerima wang tempahan atau deposit dan memasuki sebarang perjanjian jual beli dari pihak ketiga melibatkan lot 6894 and lot 2960 Mukim Bandar Johor Bahru, Negeri Johor
- D yang merupakan 13/25 bahagian tanah tersebut dikenali sebagai Grn 400157 Lot 23008 Bandar Johor Bahru Negeri Johor sehingga keputusan Mahkamah Rayuan terhadap kes guaman sivil 256 dan/atau keputusan tindakan yang difailkan.
- E 3. Satu Perintah Injunksi *Mareva* menghalang Defendan dari mencagarkan atau menggadai lot 6894 and lot 2960 Mukim Bandar Johor Bahru, Negeri Johor yang merupakan 13/25 bahagian tanah tersebut dikenali sebagai Grn 400157 Lot 23008 Bandar Johor Bahru Negeri Johor sebagai sekuriti sehingga keputusan Mahkamah Rayuan No:J-01(NCvC)-814-11/2022 dan/atau keputusan tindakan sivil yang difailkan ini.
- F 4. Satu Perintah Injunksi *Mareva* menghalang Defendan dari membuat bayaran sebanyak 19% dari nilai jualan kasar projek pembangunan di atas tanah tersebut dikenali sebagai Grn 400157 Lot 23008 Bandar Johor Bahru Negeri Johor kepada Bumaci Holdings Sdn Bhd sehingga keputusan Mahkamah Rayuan No: J-01(NCvC)-814-11/2022 dan/atau keputusan tindakan sivil yang difailkan.
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[3] On 7 February 2024, I allowed the *ex parte* application and *Mareva* injunctions order has been entered against the defendant. Subsequently, on 15 February 2024, the defendant filed an application in encl. 12 to set aside the *ex parte* order.

H **Brief Background Facts**

I [4] As a background, the plaintiff is the majority shareholder of Brumasi Holdings Sdn Bhd (in liquidation) (“Brumasi”). Brumasi was the registered proprietor of a land held under Grn 400157 Lot 23008 Bandar Johor Bahru Negeri Johor (“land”) which originally comprising of four lots known as Lots 6894, 6895, 6896 and 2960 Mukim Bandaran Johor Bahru.

[5] *Vide* a letter dated 19 September 1994, Majlis Bandaraya Johor Bahru approved the planning permission applied by Brumasi for the land to be developed into a 29-storey building complex. A

[6] On or about 1995, Brumasi had taken a loan from Bank Bumiputra Malaysia Berhad and charged 12/25 share of the land (involving Lots 6895 and 6896) to the bank for the purpose of the loan. B

[7] The charge later was taken over by Danaharta Urus Sdn Bhd (“Danaharta”) which on 15 June 2004, sold the two lots (Lots 6895 and 6896) to Asiapura Lands Sdn Bhd (“Asiapura”) for a purchase price of RM4.25 million. Nevertheless, the balance of 13/25 share of the land (Lots 6894 and 2960) remained in favour of Brumasi. C

[8] Brumasi was wound up on 12 April 2001.

[9] On 17 June 2019, Teo Cheng Hua, the then liquidator of Brumasi sold Lots 6894 and 2960 to Soo Yuh Mian for a purchase price of RM500,000. Soo Yuh Mian is the majority shareholder of Bumaci Holdings Sdn Bhd (“Bumaci”). On 27 August 2010, Lots 6894 and 2960 were transferred to Bumaci. D

[10] On 28 October 2014, Asiapura filed the suit No. JA-22NCvC-171-10-2014 (“Suit 171”) at the Johor Bahru High Court against five parties namely Kang Hock Hin, Pendaftar Hakmilik Negeri Johor, Gavin Low Peng Kuang, Brumasi, Teo Cheng Hua and Bumaci seeking for a few reliefs *inter alia* the transfer of Lots 6894 and 2960 between Brumasi to Bumaci on 27 August 2010 was invalid. E

[11] On 10 April 2017, Teo Cheng Hua was replaced by William Santosh John (“William”) as the new liquidator of Brumasi. F

[12] Less than four months after the appointment of William as the liquidator of Brumasi, on 27 August 2017, he and the rest of the parties in the Suit 171 agreed to enter a consent judgment (“consent judgment”) which terms are as follows: G

- (i) the defendant to pay Asiapura a sum of RM45 million as the full and final settlement for Asiapura’s share in Lots 6895 and 6896;
- (ii) Kang Hock Hin, Brumasi and Bumaci to surrender Lots 6894 and 2960 to the defendant; H
- (iii) Asiapura, Kang Hock Hin, Brumasi and Bumaci confirm that defendant is entitled to carry out a development project (“development project”) on the land;
- (iv) Brumasi and Bumaci to give their respective irrevocable power of attorneys in favour of the defendant to develop the land; I
- (v) although Brumasi and Bumaci have a common right in the joint venture agreement to develop the land with the defendant, Brumasi agrees that only Bumaci is entitled to receive the interest in the form of settlement

- A payment of 19% deducting from RM45 million paid to Asiapura and Brumasi agrees to not receive any payment and no right, interest or claim on the payment;
- (vi) the defendant agrees that Kang Hock Hin and Bumaci have right to sell 19% of the units in the development project after receiving any notice from Asiapura or Brumasi or the progress of the development project has reached 50%; and
- B (vii) the defendant has to commence the development project within four months after the approval of the building plans.
- C [13] The plaintiff averred there were elements of fraud in the recoding of consent judgment based on the following reasons:
- (i) William had entered into the consent judgment without authority since he failed to comply with the provision of s. 228 of the Companies Act 1965 and r. 47 of the Companies (Winding-up) Rules 1972 as confirmed by the Insolvency Department of Johor Bahru *vide* its latter dated 22 July 2018;
- D (ii) the defendant was not even a party in the Suit 171 but suddenly was agreed by all parties in the proceedings to be appointed as the developer developing the land; and
- E (iii) the defendant was agreed by all parties to receive interest, benefits and rights on the entire land.
- [14] Disagreeing with William's action in the recording of the consent judgment which was detrimental to Brumasi's interest, on 28 January 2018, the plaintiff filed an application at the Johor Bahru High Court to remove William as Brumasi's liquidator. On 9 December 2018, this application was allowed.
- F [15] Dissatisfied with the consent judgment, on 17 December 2018, the plaintiff filed Suit No. JA-22NCvC-258-12-2018 ("Suit 258") at the Johor Bahru High Court against Asiapura, Kang Hock Hin, Pendaftar Hakmilik Negeri Johor, Gavin Low Peng Kuang, Brumasi, Teo Cheng Hua, Bumaci, Soo Yuh Mian and Messrs. T.S Chong & Co. In this Suit 258, the plaintiff sought the following reliefs, *inter alia*:
- G (i) a declaration that the sale and purchase agreement dated 17 June 2009 entered into between Brumasi and Bumaci and Soo Yuh Mian was void and invalid;
- H (ii) a declaration that the transfer of Lots 6894 and 2960 from Brumasi to Bumaci on 27 August 2010 was void and invalid;
- I (iii) an order that Lots 6894 and 2960 be registered in favour of Brumasi; and
- (iv) a declaration that the consent judgment dated 27 August 2017 in the Suit 171 was void and invalid.

[16] On 11 October 2022, the Johor Bahru High Court held that there was an element of fraud in the sale of Lots 6894 and 2960 and ordered that Kang Hock Hin, Bumaci and Soo Yuh Mian to pay damages which to be assessed by the court to the plaintiff. A

[17] As the Johor Bahru High Court only allowed the relief in the form of damages to be paid to the plaintiff and not the return of Lots 6894 and 2960, on 7 November 2022 the plaintiff filed an appeal to the Court of Appeal *vide* No. J-01(NCvC)(W)-814-11-2022. To date, the appeal is still pending for decision. B

[18] On 8 August 2023, the plaintiff filed another suit against the defendant *vide* Suit No. JA-22NCvC-91-08-2023 at the Johor Bahru High Court. On 10 September 2023, the plaintiff obtained an *ex parte* Mareva injunction order against the defendant fixed and the *inter parte* hearing of the Mareva injunction order had been fixed on 15 November 2023. C

[19] Nevertheless, according to the plaintiff, on 10 October 2023 Kang Hock Hin who admitted representing all interested parties in the development project met the plaintiff to discuss on the *ex parte* Mareva injunction order. As a result of the meeting, the plaintiff agreed to sign a settlement agreement dated 10 October 2023 wherein the settlement would take place as follows: D

(i) stage 1 – Kang Hock Hin to pay the plaintiff an earnest money of RM200,000; E

(ii) stage 2 – the plaintiff:

(a) to withdraw all suits and injunction with no order as to costs, caveats relating to the land; F

(b) to inform the relevant government authorities that the plaintiff has no objection for the developer (the defendant) to proceed with construction of the project until completion; and

(c) to undertake and give irrevocable undertaking to the developer not to further take any legal proceeding and or do any act that will hinder the construction of the project G

(iii) stage 3 – upon completion of stage 2 by the plaintiff which has to be done within a week after the receipt of the earnest money: H

(a) Kang Hock Hin is to pay RM1 million to the plaintiff;

(b) upon signing of the settlement agreement, Kang Hock Hin is to pay RM1.8 million to the plaintiff;

(c) Kang Hock Hin is to pay RM4.5 million to the plaintiff on or before 11 February 2024; and I

(d) Kang Hock Hin is to pay RM4.5 million to the plaintiff on or before 11 May 2024.

- A [20] However, the plaintiff averred that the defendant refused or failed to sign the settlement agreement and this led the plaintiff to file this present action.

The Law On *Mareva* Injunction

- B [21] Abdul Malik Ishak J had succinctly explained the principle and objective of *Mareva* injunction in *Metrowangsa Asset Management Sdn Bhd & Anor v. Ahmad Hj Hassan & Ors* [2004] CLJU 699; [2004] 1 LNS 699; [2004] 4 AMR 30; [2005] 1 MLJ 654 where His Lordship said:

- C It goes without saying that this court has the jurisdiction to grant an interlocutory injunction restraining the disposal of property over which the particular plaintiff has a proprietary claim. *A Mareva injunction too would restrain the particular defendant from disposing of, or even merely dealing with, the assets of the particular plaintiff which were assets over which the particular plaintiff asserts no proprietary claim but which after judgment those assets may be attached in order to satisfy a money judgment.* More often than not, when the day of judgment arrives, the particular plaintiff may not be able to enjoy the fruits of that judgment fully or at all because of dissipation. To prevent this, a *Mareva* injunction is the answer to it. It is an injunction where the particular defendant may be prevented from dissipating such assets and in the words of Lord Donaldson MR in *Derby & Co. Ltd v. Weldon*, (No: 3 & 4) [1990] Ch. 65 at 76, CA and Nicholls LJ in *Atlas Maritime Co. SA v. Avalon Maritime Ltd (No: 3) (The "Coral Rose")* [1991] 1 WLR 917 at 929 "a defendant is not permitted to thwart in advance orders which the court may make". Indeed the width and breadth of a *Mareva* injunction is beyond imagination. A *Mareva* injunction may even be granted where the particular plaintiff does not even claim any interest in the assets and merely "seeks an inhibition of dealings with them simply in order to keep them available for a possible future execution to satisfy an unconnected claim" (per Lord Mustill in *Mercedes-Benz A.G. v. Leiduck* [1995] 3 All ER 929 at 939). So it is not uncommon for a *Mareva* injunction to be granted in a wide varying fact situation. Its grant is not confined to merely preventing the removal or disposal of assets so as to defeat a judgment but it also includes terms securing a particular property where the particular plaintiff asserts a proprietary or tracing claim. Indeed a *Mareva* injunction is all encompassing. It could be used to restrain the disposal of assets within the jurisdiction as well as without. For this proposition, reference should be made to the case of *Ninemia Maritime Corporation v. Trave Schiffahrtsgesellschaft m.b.H. und Co. K.G. (The Niedersachsen)* [1984] 1 All ER 398; [1983] 2 Lloyd's Rep. 600, CA. (emphasis added)

- H [22] The principles and legal framework governing the application of a *Mareva* injunction are well-established. The Court of Appeal case of *Lee Kai Wuen & Anor v. Lee Yee Wuen* [2022] 7 CLJ 505; [2022] MLJU 3411 laid out the three main criteria that need to be met. Darryl Goon JCA when delivering the judgment of the court said:
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(1) To secure a *Mareva* injunction, **three vital ingredients** must be established, namely: (i) that the applicant had **a good arguable case**; (ii) that the respondent had **assets within the jurisdiction**; and (iii) **that there was a real risk that the assets would be dissipated** or placed beyond the reach of the applicant before judgment. That the appellants had assets within the jurisdiction was not a fact in dispute. The main ingredients that gave rise to serious contentions were whether there existed a good arguable case in favour of the respondent and whether there was a real risk that the appellants would dissipate or dispose of their assets to defeat any judgment that may be entered in the respondent's favour. (paras 56, 58 & 60) (emphasis added)

A

B

Whether The Plaintiff Has A Good Arguable Case

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[23] The defendant contended that the *ex parte Mareva* injunction order has to be set aside as the plaintiff lacks good arguable case based on the following reasons:

(i) all issues regarding the land including Lots 6894 and 2960 had been duly ventilated and decided in the Suit 258 on 11 October 2022. Since the plaintiff had brought these issues on appeal to the Court of Appeal, the plaintiff should have filed the application for *Mareva* injunction at the Court of Appeal and not to file a new suit in this High Court simply to obtain *Mareva* injunctions against the defendant;

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(ii) this plaintiff's suit is estopped by the principle of *res judicata* as all issues regarding the land including Lots 6894 and 2960 had been duly ventilated and decided in the Suit 258 and now pending at the Court of Appeal;

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(iii) Brumasi was wound up and only its liquidator is entitled to commence and maintain this suit and thus, the plaintiff lacks *locus standi*; and

F

(iv) plaintiff is an undischarged bankrupt.

[24] To establish a good arguable case, the plaintiff is required to establish his case no greater than 50% chance of success. Nonetheless, the case should be more than just a mere possibility and capable of serious argument. In *Lee Kai Wuen & Anor (supra)*, the Court of Appeal held:

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[61] As the learned judge quite rightly pointed out, *in order to establish a good arguable case, it was not necessary that the applicant's case has to have a better than 50% chance of success, although it has to be more than barely capable of serious argument*. In the words of Mustill J in *Ninemia Maritime Corporation* at p. 404 of the report above-cited, which was reiterated by the Federal Court in *S & F International Limited* at p. 64:

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... I consider the right course is to adopt the tests of a good arguable case, in the sense of a case which is *more than barely capable of serious argument, and yet not necessarily one which the judge believes to have a better than 50% chance of success*.

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A [62] In the decision of this court in *Biasamas Sdn Bhd & Ors v. Kan Yan Heng & Anor* [1998] 4 CLJ 754; [1998] 4 MLJ 1 at p. 759 (CLJ); p. 5 (MLJ), Haidar Mohd Noor JCA delivering the judgment of the court used the phrase, ‘a fair chance’ of success. This was how Haidar Mohd Noor JCA put it:

B What is a good arguable case is difficult to define. The respondents need not show that they have a case so strong as to warrant summary judgment nor even a strong *prima facie* case. It would generally be sufficient if the respondents can show on the evidence available, there is a fair chance that they will obtain judgment against the appellants (see *Ninemia Maritime Corp v. Trave Schiffahrtsgesellschaft mbH & Co KG; The Niedersachsen* [1984] 1 All ER 398, on appeal to CA [1984] 1 All ER 413; [1983] 1 WLR 1412).
C (emphasis added)

[25] Back to the instant case, upon perusal of the cause papers, I find that the plaintiff has successfully established a good arguable case. The reasons are as below.
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[26] It is crystal-clear that the crux of the dispute in this action is on the status of Lots 6894 and 2960 which are now in the midst of being developed by the defendant. The narrative of facts shows how these two lots were fraudulently transferred from Brumasi to the defendant. It is not a bare allegation by the plaintiff but the fraud was confirmed by the Johor Bahru High Court. Justice Murad Abdul Aziz in the Suit 258 clearly decided that the then-Brumasi’s liquidator failed to comply with the provisions in the Companies Act and its rules when entering the consent judgment which resulted the ownership of the two lots shifted to the defendant. Not only that,
E the documentary evidence exhibited by the plaintiff also disclosed that the winding-up court on 10 April 2017 found that the then-Brumasi’s liquidator was guilty of misconduct in handling the liquidation of Brumasi’s assets.
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[27] Based on the above observations, I have no doubt to hold that the plaintiff’s case is more than barely capable of serious argument.

G [28] On the issue of *res judicata* raised by the defendant, I find that there is no basis for the principle is applicable in the present action. The reason for the plaintiff to narrate the chronology of events on Lots 6894 and 2960 here was not for this court to decide on the status of such lots but simply to explain on how these two lots fell into the defendant’s hands and to injunct the defendant from further dealing with the lots pending the decision of the Court of Appeal. Thus, there would be no multiplicity of decisions as advocated by the defendant’s facts.
H

[29] On the defendant’s argument that the plaintiff should have filed the application for *Mareva* injunction at the Court of Appeal, I find that the argument also is unfounded. I am of the view that as the power to grant a
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Mareva injunction is within the jurisdiction of this court, there is no hindrance for the plaintiff to file such application here. At this point I find instructive the Federal Court case of *S & F International Ltd v. Trans-Con Engineering Sdn Bhd* [1985] 2 CLJ 228; [1985] CLJ (Rep) 280; [1985] 1 MLJ 62, where it was stated by Eusoffe Abdoolcader FJ in the following passage:

We should perhaps also reiterate and stress the point that the discretion whether or not to grant an interlocutory injunction is vested in the High Court Judge and not the appellate court whose function initially is one of review only, and it will not overrule the decision of the judge at first instance unless, broadly speaking, he has made an error of law or misconceived the facts, and except in those circumstances it must defer to the judge's exercise of his discretion and must not interfere with it merely upon the ground that the members of the appellate court would have exercised the discretion differently: Duport Steels Ltd. v. Sirs (6); Hadmor Productions Ltd. v. Hamilton (7); Garden Cottage Foods Ltd. v. Milk Marketing Board (8). These decisions of the House of Lords were referred to and applied by the English Court of Appeal in Ninemia Maritime Corporation [1983] 1 WLR at p. 1421; [1984] 1 All ER at p. 418) where Kerr, LJ, in delivering the judgment of the court stated that recent decisions of the House have emphasised the importance of appellate courts resisting the temptation to interfere with the exercise of judicial discretions other than in limited circumstances.

(emphasis added)

[30] It is pertinent to note that because of the importance to preserve an asset from being disposed or dealt, a *Mareva* injunction can be applied at any time when necessary. This is underscored in *Metrowangsa Asset Management Sdn Bhd & Anor (supra)*, where it was held:

Of pertinence would be this. *That a Mareva injunction may be granted where it appears to the court that it is "just and convenient to do so" and it may even be granted at any time.* According to Jessel MR in *Day v. Brownrigg* [1878] 10 Ch D 294 at 307 that the words "just or convenient" in the statutory provision must be read as "just, as well as convenient". It is also ideal to refer to the case of *Beddow v. Beddow* [1878] 9 Ch D 89 at 93. Moreover those words do not mean that the court can grant an injunction simply because it thinks that it is convenient to do so but rather those words mean *that the court should grant an injunction for the protection of rights or the prevention of injury according to the legal principles (Aslatt v. Southampton Corpn [1880] 16 Ch D 143 at 148).*

(emphasis added)

[31] Regarding the defendant's argument that only Brumasi's liquidator is entitled to commence and maintain this suit as the company was wound up, again I find this argument is misconceived. The plaintiff had duly obtained the sanction from Brumasi's liquidator *vide* a letter dated 24 July 2023. By having this sanction, the plaintiff is competent to commence this action. This is fortified by the Federal Court case of *Lai King Lung & Anor v. Merais Sdn Bhd* [2020] 9 CLJ 449, where Vernon Ong Lam Kiat FCJ when delivering the judgment of the court said:

- A [20] Similarly, if a company is wound up by an order of court, the board of directors becomes *functus officio*. The management of the company is vested in the liquidator. Only the liquidator has the power under the 2016 Act to bring or defend any action or other legal proceedings in the name and on behalf of the company. A creditor or contributory cannot commence or continue with any action in the name of the wound-up company.
- B Accordingly, if a creditor or contributory of the wound up company wishes to bring or proceed with an action, the creditor or contributory must apply to the liquidator for his sanction to do so. In order to ensure that the defendant is not prejudiced in the event that the wound-up company's action is dismissed, the liquidators usually impose conditions (such as indemnities and guarantees) which must be satisfied by the creditor or contributory, as the case may be, before the sanction is given.
- C [21] At the outset, it is important to appreciate that there are two different and distinct fact situations under which leave of the court or sanction of the liquidator is required. The first is in respect of action or proceeding against a wound-up company. This situation is governed by s. 226(3) of the 1965 Act /s. 471(1) of the 2016 Act which provides that leave of court is necessary in order for any action or proceeding proceeded with or commenced against a woundup company. The second scenario is where action or proceeding is taken by a wound-up company: s. 236(2)(a) & 236(3) of the 1965 Act /s. 486 of the 2016 Act read together with Part I of the Twelfth Schedule which requires the sanction of the liquidator to be obtained. The factual matrix in this appeal falls under the latter scenario. (emphasis added)
- D [32] Likewise, the status of the plaintiff as an undischarged bankrupt this does not affect the plaintiff's *locus standi* since the Insolvency Department had given its sanction to him *via* its letter dated 19 July 2023.
- E
- F **Whether The Defendant Has Assets Within The Jurisdiction And Whether There Is A Real Risk That The Assets Would Be Dissipated**
- G [33] Regarding the second criteria for the *Mareva* injunction to remain, there is no doubt that the land which comprises of Lots 6894 and 2960 is now owned by the defendant and within the jurisdiction of this court.
- H [34] On the third criteria, *ie*, that there is a real risk that the assets would be dissipated, I find that the following important facts:
- I (i) the land is being developed by the defendant into a 29-storey building complex;
- (ii) the defendant has been offering for sale a number of units in the development project to public and a sales office has been erected on the land where brochures about units are distributed;
- (iii) the defendant has advertised the sale of units in the development project *vide* the Star Online on 5 June 2023; and
- (iv) the defendant has received RM10,000 from a purchaser by the name of Woon Gee Teng as the payment of deposit for a unit known as A-25-21 on 2 July 2023. The selling price of this unit is RM714,000.

[35] I find that the above facts disclose sufficient evidence to support the plaintiff’s allegations that Lots 6894 and 2960 are in imminent danger and the dissipation of these lots is real and not a bare allegation.

A

Conclusion

[36] As a conclusion, after judicious consideration of all the evidence before me, both oral and documentary, and submissions of all parties, I find that all criteria for the grant of *Mareva* injunction are met. No doubt that this is a suitable case for such injunction to be made to ensure that the assets are not dissipated by the defendant. Thus, I allow the *Mareva* injunctions order to remain and I dismiss the defendant’s application to set aside the order with costs.

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